

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff/
Appellant.

vs.

Case No. 2006-688-AR

LAMONT LOUIS ARNOLD,

Defendant/
Appellee.

OPINION AND ORDER

This matter is before the Court on an appeal from the 37th District Court's oral ruling.

Appellee was charged with one count of receiving and concealing stolen property of \$1,000 or more, contrary to MCL 750.535(3)(a). A preliminary examination was conducted on February 7, 2006, during which the District Court ruled that Appellant would not be permitted to use hearsay testimony to establish the following: (1) the ownership, value, and possession of certain earrings; (2) the ownership, possession, and authority to use the credit card for the purchase of such earrings; and (3) the ownership, possession, and authority to use fraudulent checks found in Appellee's vehicle.

Appellant presently contends that hearsay is admissible during a preliminary examination. Further, Appellant maintains that if such testimony is not allowed, Appellant will be required to subpoena non-hearsay witnesses from out of town, which will cause the taxpayers to incur unnecessary expenses. Appellee failed to file a response.



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At the outset, the Court will set forth the applicable standard of review. A ruling regarding the admission of evidence is reviewed under the abuse of discretion standard. *People v McMillan*, 213 Mich App 134, 137; 539 NW2d 553 (1995). An appellate court will find an abuse of discretion only when an unprejudiced individual, considering the facts on which the lower court acted, would conclude there was no justification or excuse for the ruling. *People v Underwood*, 184 Mich App 784, 786; 459 NW2d 106 (1990).

MRE 801(c) defines "hearsay" as:

...a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Pursuant to MRE 802, hearsay is not admissible "except as provided by these rules." In turn, MRE 1101(b)(8) specifically provides that:

At preliminary examinations in criminal cases, hearsay is admissible to prove, with regard to property, the ownership, authority to use, value, possession and entry.

This Court finds as persuasive the December 22, 2005 *Opinion and Order* in *People v Quashie*, Macomb County Circuit Court Case No. 05-4088-FH, the Hon. Mary A. Chrzanowski presiding. In *Quashie*, the Court considered the defendant's motion to quash the information on the ground that, during the preliminary examination, the prosecutor relied primarily on the testimony of an officer, who related what a non-testifying third party told him. The defendant argued that such testimony violated his Sixth Amendment right of confrontation, as explained by the United States Supreme Court in *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004). *Crawford* held that "[w]here testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is...confrontation." 158 L Ed 2d at 203. However, the Court in *Quashie* concluded that neither the confrontation clause nor

Crawford applied to a preliminary examination, especially in light of the defendant's failure to submit any authority to the contrary.

In the matter at hand, hearsay is clearly admissible during preliminary examinations under MRE 1101(b)(8). Further, the Court has not been provided with any authority that the proposed hearsay evidence should be excluded on constitutional grounds. Under these circumstances, the Court determines that the District Court's ruling constituted an abuse of discretion. *Underwood, supra*.

For the reasons set forth above, the 37th District Court's ruling excluding Appellant's proposed hearsay testimony is REVERSED. This matter is remanded for proceedings consistent with this *Opinion and Order*.

In compliance with MCR 2.602(A)(3), the Court finds that this decision resolves the last pending issue and closes the case.

IT IS SO ORDERED.

EDWARD A. SERVITTO, JR., Circuit Court Judge

Date:

Cc: Macomb County Prosecutor

Marlon Evans, Attorney for Defendant/Appellee

EDWARD A. SERVITTO
CIRCUIT JUDGE

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BY: *[Signature]* Court Clerk